

ESTATE OF KRISTI LYNN MAKETA : Order Affirming Decision  
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: Docket No. IBIA 97-81  
:  
: February 27, 1998

Appellant Corrine Rising Sun Mechance seeks review of an Order Denying Rehearing issued in the estate of Decedent Kristi Lynn Maketa on November 6, 1996, by Administrative Law Judge Richard L. Reeh. Denial of rehearing let stand an August 12, 1996, Order Determining Heirs and Decree of Distribution also entered by Judge Reeh. For the reasons discussed below, the Board of Indian Appeals (Board) affirms those decisions.

Decedent was Appellant's natural daughter and was born Josie Dawn Rising Sun on August 18, 1970. She was an enrolled member of the Turtle Mountain Chippewa Tribe. John and Chrystyna Maketa adopted Decedent through the Montana State courts on August 16, 1972, and moved her to Alaska. Decedent was still domiciled in Alaska when she died there as the result of an automobile accident on August 31, 1989.

Decedent's entire trust or restricted estate consisted of an Individual Indian Money (IIM) account. She did not leave a will.

Appellant argued to Judge Reeh that she had made efforts to regain custody of Decedent and that Decedent's personal property should be distributed under the intestate succession laws of the State of North Dakota. By order dated August 12, 1996, Judge Reeh rejected Appellant's arguments, and held that the IIM account was personal property which was to be distributed under the intestate succession laws of the State of Alaska, the state of Decedent's domicile at the time of her death. Under Alaska law, the Judge found that Decedent's estate was to be divided equally between her adoptive mother and adoptive father.

Appellant sought rehearing, raising the same arguments. Judge Reeh denied rehearing on November 6, 1996, finding that even if he had applied North Dakota law, the result would have been the same, because North Dakota also extinguishes the inheritance rights of the natural parents of an adopted child. Furthermore, the Judge noted, he had no jurisdiction to consider Appellant's contest of the adoption.

Appellant appealed to the Board and filed a one-page statement in support of her appeal. No other briefs were filed. Appellant repeats the same two arguments on appeal.

Appellant bears the burden of proving the error in Judge Reeh's denial of rehearing. See, e.g., Estate of Sam Pooengerah, 28 IBIA 92, 94 (1995); Estate of Grace American Horse Tallbird, 26 IBIA 87, 88 (1994), and cases cited therein.

Assuming that Appellant has any right to continue to contest Decedent's adoption after Decedent's death, this probate proceeding is not the proper place to do so. Appellant has presented no evidence that the adoption decree has been overturned or otherwise modified by a court with jurisdiction to consider the validity of that decree. Thus, she has failed to show that the adoption decree should not be considered for purposes of Departmental probate of Decedent's trust or restricted estate.

Appellant's second argument is that the Judge should have applied the intestate succession laws of North Dakota because "[t]he resources distributed in this matter are assets accrued in [Decedent's IIM] account in North Dakota, and amounted to income received on properties and/or interest held exclusively in North Dakota." Statement of Appellant. Appellant presents this argument as a conclusion, and fails to submit either factual support for her contention that the funds in the IIM account were derived from properties located in North Dakota, 1/ or legal support for her contention that the laws of North Dakota should be applied. She also fails to address Judge Reeh's holding that the intestate succession laws of Alaska and North Dakota are the same in regard to the inheritance rights of the natural parents of an adopted child. In the absence of any support for her assertion of error, Appellant has failed to carry her burden of proof. 2/

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, Judge Reeh's November 6, 1996, Order Denying Rehearing and August 12, 1996, Order Determining Heirs and Decree of Distribution are affirmed.

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Kathryn A. Lynn  
Chief Administrative Judge

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Anita Vogt  
Administrative Judge

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1/ Nothing in the materials before the Board shows the source of the funds in Decedent's IIM account.

2/ The Board is aware that there are questions concerning the proper distribution of trust or restricted personal property. Appellant's failure to raise any factual or legal arguments in support of her contention as to the proper distribution renders this an inappropriate case in which to review that general question. However, the Board serves notice that, if an appropriate case is brought before it, it will, at a minimum, reconsider the interpretation of 25 U.S.C. § 373 (1994) announced in Estate of Richard Doyle Two Bulls, 11 IBIA 77 (1983), as it relates to this question.